

The May 14, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of the Town Hall.

Chairman James Stanton called the meeting to order at 7:00 p.m. with the following members present:

James M. Stanton, Chairman
Matthew Zuker, Vice Chairman
Craig Hiltz, Clerk (not present)
James S. DeCelle, Member
Susanne Murphy, Member
Mary Jane Coffey, Associate Member
Timothy Foley, Associate Member

7:00 p.m. – Michael P. & Bridget Servatius – Case #02-14 (cont'd from April 30, 2014)

Mr. Stanton read the public hearing notice for **Michael P. & Bridget Servatius, Case #02-14**, with respect to property located at 2 Mikayla's Way, Walpole and shown on the Assessors Map as Lot No. 27-252-1 Lot 2, Residence B Zone.

The application is for:

An Appeal from action taken by Building Inspector, Jack Mee, with respect to Building Permit issued on 4/16/2013 and amended on 12/16/13, Building Permit #BP-2013-0102, to permit multi-family dwelling in Residence B Zone. Use not allowed. Property does not meet requirements of c.40A, Section 3; Site Plan Review required.

Mr. Michael Servatius of 2 Mikayla's Way noted that last time we met we were giving Attorney John Rockwood a chance to submit a revised lease so we can then move on from that.

Mr. John Rockwood, Attorney for Mr. Jack Roche, owner of the property in question, submitted the new lease into the record. He then mentioned that he invited Ms. Sarah Freidman from Jewish Family & Children's Services (JFCS) to the meeting. Mr. Rockwood stated that they came up with a new lease that he hopes addressed the Board's concerns. We altered definition of the premises. We changed the rent amount, found in paragraph three. All of the residents must engage in educational opportunities. We substantially changed that section of the lease.

Ms. Freidman added that JFCS now is the only entity who can rent out the rooms. Mr. Jack Roche cannot.

Mr. Rockwood stated that Mr. Roche does not want to have any responsibility with finding a tenant. That is solely JFCS job.

Ms. Murphy mentioned that it says that the staff member should be trained but she wishes that was a little more definitive.

Ms. Freidman noted that this is the basic language they use in all of their leases.

Mr. Rockwood mentioned that he discussed this with Town Counsel and that she felt that the old lease was sufficient.

Mr. Stanton stated that he does not remember her ever saying that and asked if that was outside of this meeting room.

Mr. Rockwood stated that it was in an email.

Mr. Stanton stated that he would like to see that email if Mr. Rockwood could find it.

Mr. Rockwood said that he would get the email for the board.

Mr. Stanton wanted to know if this lease has been executed.

Mr. Rockwood said no, not yet.

Ms. Freidman explained that she can get that for the Board by tomorrow. She explained that she has been in Norwood and her boss is in Waltham.

Mr. Servatius explained that this is a zoning issue first and foremost. The property must be leased or owned by the state of Massachusetts. Looking over the lease, he did notice that they took out that part that allows Mr. Roche to pick who he would like to rent the rooms to. The Dover Amendment says that it should be the whole of the property. It says that 10 out of 12 of the bedrooms.

Mr. Stanton stated that the lease takes control from Mr. Roche.

Mr. Servatius argued that Mr. Roche is still leasing to the JFCS. The staff will not be at the house the whole time. The primary use of this property is residential NOT educational.

Ms. Freidman explained that residential and educational go hand in hand.

Mr. Servatius said that the law states it needs to be primarily educational. Under page four, paragraph six of the revised lease, it states that the primary purpose is to provide educational services. It does not say that this is the primary and predominate purpose.

Mr. Rockwood explained that case law broadens that definition.

Mr. Servatius stated that it makes the staff available and talks about providing staff but it does not say when the staff will be educating them.

Ms. Freidman explained that a staff schedule would not be in a lease.

Ms. Coffey said that we could go over the lease line by line and not everyone would agree. It is predominate throughout this lease. They will go to work, get on a train etc. that to me makes this seem like they are living in a residence. What I am hung up on is the way the money will be

paid directly to the man who owns that property. The Dover Amendment is not supposed to be paying the landowner. That money is going to a for profit landlord. This is a greater issue as far as I am concerned. I find it appalling that this building is totally ready to go without the correct Zoning Board of Appeals permits. Who would spend the money and put this giant home in there. Unless they had iron clad proof that it would go through.

Mr. Rockwood explained that this type of facility is regularly found to be an educational use. The statute acknowledges that.

Ms. Freidman explained that JFCS has complete control over who goes in. This takes out the middle step.

Mr. Stanton wanted to know if this is the arrangement that JFCS have with all of the property owners and why.

Ms. Freidman explained that it is one less step.

Mr. Stanton wanted to know why the developer just does not pay the LLC \$10,000 a month.

Ms. Freidman explained that they are not in the landlord service. They would not make good landlords.

Mr. Zuker wanted to know what conditions the Board can put on this. The Board is not here to debate the Dover Amendment. He informed Mr. Servatius that this does not make his other concerns like roads, safety and parking go away. It is important that the board gets to those issues.

Mr. Warren Baker from 599 Washington Street wanted to know if it was JFCS or Mr. Roche who initiated this.

Ms. Freidman explained that in 2010 JFCS opened the Yellow House. They had a lot of requests for more houses like this.

Mr. Stanton stated that clearly Mr. Roche and JFCS have a preexisting relationship. He also noted that the building permit was dated April 16, 2013.

Mr. DeCelle noted that they can work on the house with a building permit.

Mr. Zuker asked Mr. Servatius for his list of concerns.

Mr. Servatius stated that his concerns are: trash removal, the two houses share the narrow driveway and use the same entrance as well as parking concerns.

Mr. Roche said that Ms. Freidman was able to take a picture of two vehicles side by side in the driveway with enough room.

Mr. Stanton asked Mr. Roche and Ms. Freidman to submit whatever they would like to the record including the picture that they had of the two cars in the driveway side by side. He noticed that 76% of the residents in the house will be in their 20's and questioned if they all would be driving.

Mr. Servatius stated that they were told that none of the residents will drive. However, there will be parents and guests visiting. The Planning Board stated that there were special conditions and it was granted on this being a single family, three-bedroom home. This was supposed to be a private way. Now it is not private. It is not safe for the amount of traffic projected going up and down this shared driveway.

Mr. Stanton wanted to know if there were any conditions that the Board could add that will satisfy Mr. Servatius on this.

Mr. Servatius stated that there is not enough room on the driveway and that it is a safety concern.

Ms. Murphy stated that the Board can add safety as a concern.

Mr. Rockwood explained that they are not going to make Mikayla's Way a public drive. He stated that Mr. Roche has said that he will be willing to do whatever the Board asks of him.

Mr. Zuker wanted to know if the site plan shows the parking.

Mr. Gallagher from JFCS stated that they have not submitted a site plan that shows parking.

Mr. Zuker noted that you would need one parking space for each sleeping room; therefore there should be 12 parking spaces. He also mentioned that there should be a sidewalk for the residence to walk down the driveway

Mr. Servatius said that there is not enough space to accommodate 12 parking spaces.

Ms. Coffey mentioned that she drove in there the other day and that there is not a lot of room.

Mr. DeCelle wanted to know if they have the ability to increase that width.

Mr. Servatius stated that it would encroach on his fences.

Ms. Murphy mentioned that the Board did not have anything in print regarding the parking site plan or what the fire chief said.

Mr. Gallagher stated that there is nothing in print. He had bumped into the Fire Chief and asked him.

Ms. Murphy said that she wanted snow removal shown.

Mr. Gallagher noted that JFCS has a contract with a company for snow removal in Norwood.

Building Inspector Jack Mee stated that he had an email from the Deputy FireChief dated on December 16, 2013. The only problem the Deputy Chief mentioned was the bend in the driveway. The General Contractor mentioned that he will put in a residential sprinkler. A site plan would not be required.

Mr. Zuker stated that from a parking standpoint, they would need 12 spaces.

Mr. Mee agreed that parking will definitely need to be addressed.

Mr. Ed Ryan a resident from Walpole stated that he lives in Symphony Park, a development of 70 homes. He mentioned that they live a half mile from two state prisons and there is a lot of noise. There is a minimum of 20 children in the neighborhood. Yet with all of these detractions, we pay the highest taxes. I have sat here and listened to a lot of these statements. We are talking about challenged young adults who simply want to learn.

Mr. Stanton said that what you are trying to do is to set something up and the board does not appreciate it.

Mr. Ryan yelled don't interrupt me. I have heard these things that have been said. It is a reasonable living arrangement for these people. People are trying to create opinions where there are not any. The challenges these kids face every day, they face challenges we cannot imagine. Their parents can't understand. I am tired of listening to red herons.

Mr. Stanton stated that he had not heard any red herons.

Mr. Ryan claimed that the Board has bent over backwards for the red herons coming from here (pointed to Mr. and Mrs. Servatius). I'm not trying to inflame this.

Mr. Stanton explained that this is the Zoning Board and that he is putting an end to all of this. We are trying to be respectful to everyone in this room; I can assure you of that.

Ms. Judy Fontz of 755 Washington Street wanted to speak to the educational process. She introduced her son, Eric who is in his 20's, and stated that when he was three years old, she was told that he would have the development of a 5 year old. As soon as he wakes up in the morning and all day long, everything he does is educational. There are IEP's (Individual Educational Plan's) that are structured programs for learning, schedules, cleaning, and self-hygiene. Their whole life is educational. By living in that home, the whole thing is an educational experience. They want to have some sense of independence and communication skills. LIFE is their education.

Eric Fontz of 755 Washington Street stated that he has lived in Walpole his whole life. He is a nice and lovable guy. He has gone to Walpole High. He wants people to be able to live in this house. He does not understand why there is a problem. They want to live here. Let them live here.

Mr. Servatius said that there are a lot of people who are here tonight who have not been here other nights. This is not a discrimination case. This is a zoning case. No one has asked our opinion. We did not even know who was going to live in that house. There has been lots of deception. At first they heard it could be a group home. They wondered if they are zoned for a group home. We spoke to a woman in the Walpole Housing Authority. We were told that they would have to talk with the neighbors. Mr. and Mrs. Servatius do not care who lives in the home. It is just the number of people that would be living in the home.

Mr. Andrew Bronton from Walpole stated that we need a home for people to live in. The houses have opened a year ago. Newton opened one in March. Walpole will need a group home for people to live in to become independent. We need a house to go in.

Mr. Stanton stated that they have heard both sides. The Board believes that they have covered all of the issues.

Ms. Murphy asked with all of the properties available in Walpole, why the JFCS didn't find a better location. The issue here is that this is a single family home.

Mr. Roche stated that he is the owner of the property at Mikayla's Way. Before he had bought the property, he had met with the Town of Walpole. He showed them what he wanted to do. He met with the Town Manager and Walpole Housing Authority and they did not have a problem with it. By the time everything got squared away and he passed papers, he had a stroke. The neighbors could have met with him. He stated that he tried to talk to them. They did not want to talk. I'm not pointing any fingers. I just wanted to put that on the record and make that clear.

Mr. Stanton said that they had heard everything and that he was going to make a motion to close the public hearing. The Board will not make a decision on this tonight but would make a decision on May 28th. On May 28, 2014, the Board would not take any more public input.

Mr. Rockwood mentioned that he will get the parking and snow removal. He is willing to meet with Mr. and Mrs. Servatius and wanted to make a point that Mr. and Mrs. Servatius have never spoken any ill will. His hopes were that they would be willing to talk with him.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to close the public hearing. A decision would be made on May 28, 2014.

The vote was **5-0-0 in favor**. (Stanton, Zuker, DeCelle, Murphy, Coffey, Foley voting)

7:25 p.m. – Request for Extension – Case #08-14 (James Clarkin)

Mr. Stanton stated that Mr. Clarkin was here to request an extension on a Variance granted on May 15, 2013 to allow construction of a garage 24 feet by 28 feet located 15 feet from the side yard where 40 feet is required.

Mr. Clarkin stated that he was at the Town Hall the other day. Due to unforeseeable medical issues, he was unable to build his garage at that time. He is now doing better and is negotiating with a builder now.

Mr. Stanton asked if anyone from the public had a problem with the granting of the extension. No concerns were made from the public.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to grant the extension to May 16, 2015 for a Variance from Section 6.B of the Zoning Bylaws to allow construction of a garage 24 feet by 28 feet located 15 feet from the side yard where 40 feet is required.

The vote was **5-0-0 in favor**. (Stanton, Zuker, DeCelle, Murphy, and Coffey voting)

7:30 p.m. – James L. Diamond Jr. – Case #05-14 (DELIBERATION) (Stanton, Zuker, DeCelle, Murphy)

Mr. Stanton read the public hearing notice for **JAMES L. DIAMOND JR. – Case #05-14**, with respect to property located at 759 Cedar Street, Walpole and shown on the Assessors Map as Lot No. 39-19, Residence A Zone.

The application is for:

A Special Permit under Section 9.4.A of the Zoning Bylaws to allow an addition onto an existing non-conforming structure and A Variance under Section 6-B.1 of the Zoning Bylaws to allow for a 10ft sideyard setback where a 20ft minimum sideyard setback is required, as specified in Section 6-B.1.

Mr. DeCelle mentioned that what bothers him the most is the two stories.

Mr. Zuker wanted to know what the requirement for a sideyard setback is.

Mr. DeCelle stated that it was 20 feet.

Mr. Zuker noted that if it was closer to the present sideyard setback of 15 feet, he would not have a problem with the Special Permit.

Ms. Coffey stated that she does not have a problem with any of this. People do it all of the time.

Mr. DeCelle stated that if it was one story then he would agree, the issue is the second floor.

Mr. Zuker said that right now Mr. Diamond has a nonconforming house. Under the Special Permit, you would be allowed to do that.

Mr. DeCelle believes that it would be detrimental if the house is two stories.

Ms. Murphy wanted to know what the hardship would be.

Mr. Zuker stated that there isn't one and that Mr. Diamond needs to show a hardship for the variance. Mr. Zuker felt that Mr. Diamond cites both a variance and special permit. Could the board vote yes on one and no on the other?

Mr. Stanton felt that the applicant is applying for a special permit and a variance together and that he needs to get the votes.

Mr. Zuker stated that they had asked Jack Mee this question about six months ago. He said that the Board has done that for other applicants.

Mr. Stanton stated that it was clearly a variance. He believes that the Board would need to vote on both. It is the applicant's burden to figure out what he or she needs to apply for and do it. We have two things in front of us.

Mr. Zuker said that he disagreed with Mr. Stanton. His interpretation was that, he felt it was the Building Inspector's job. The Building Inspector cites both of them. Mr. Zuker stated that he is OK with the Special Permit. The board needs to vote on what is before them. He mentioned that he has an issue with the height. He does not feel like it is grounds to reject or approve, just not to give out the variance.

Mr. DeCelle said that the board needs to vote on this plan in front of them.

Mr. Zuker stated that he has no issue with the plan or the Special Permit.

Mr. Stanton reiterated that the burden of the applicant is to apply for what they need.

Mr. Zuker stated that there was a plan submitted to the Building Inspector which was denied. The Board has quirky provisions and he believes they need to speak with Mr. Mee.

Mr. Stanton felt the board is ready to vote.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, on behalf of the applicant, to approve a Special Permit under Section 9.4.A of the Zoning Bylaws to allow an addition onto an existing non-conforming structure.

The vote was **1-3-0**; therefore, the application for a **Special Permit** is hereby **denied** (Zuker voting in favor; Stanton, DeCelle, Murphy voting in opposition) (Ms. Coffey and Mr. Foley were not present for the March 26th hearing)

A motion was made by Mr. Zuker, seconded by Mr. Stanton to deny the Special Permit without prejudice.

The vote was **4-0-0 in favor** (Stanton, Zuker, DeCelle, Murphy voting)

A motion was made by Mr. Stanton, seconded by Mr. Zuker, on behalf of the applicant, to approve a Variance from Section 6-B.1 of the Zoning Bylaws to allow for a 10ft sideyard setback where a 20ft minimum sideyard setback is required.

The vote was **0-4-0**; therefore, the application for a **Variance** is hereby **denied**. (Stanton, Zuker, DeCelle, Murphy voting) (Ms. Coffey and Mr. Foley were not present for the March 26th hearing.)

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to adjourn the meeting at 9:16 p.m. The vote was **5-0-0 in favor**. (Stanton, Zuker, DeCelle, Murphy, Coffey voting)

Craig W. Hiltz
Clerk

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Minutes were approved on September 24, 2014.